

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of ARM)	NOTICE OF PUBLIC HEARING
37.30.404 and 37.30.405 pertaining to)	ON PROPOSED AMENDMENT
Vocational Rehabilitation Program)	
financial need standards and payment)	
for services)	

TO: All Interested Persons

1. On May 2, 2007, at 10:00 a.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed amendment of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on April 23, 2007, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; e-mail dphhslegal@mt.gov.

2. The rules as proposed to be amended provide as follows. Matter to be added is underlined. Matter to be deleted is interlined.

37.30.404 VOCATIONAL REHABILITATION PROGRAM: ADAPTATIONS
OF FINANCIAL NEED STANDARDS (1) ~~The department may, within its discretion,~~
~~use adaptations of the financial need standard where the situation of a client is one~~
~~of special circumstances which are subject to objective definition by documentation.~~
~~These objectively defined circumstances include: variations in need due to special~~
~~needs accompanying designated types of disabilities; variations in need based on~~
~~the nature of living requirements in different localities; variations in need based on~~
~~the nature of living requirements caused by particular rehabilitative services to be~~
~~provided; and variations in need due to short periods of medical care for acute~~

~~physical and mental conditions arising during the course of vocational rehabilitation.~~
~~The department will direct the exercise of this discretion and determine the~~
~~circumstances in which it may be utilized.~~ The department may, within its discretion,
use in relation to a particular consumer adaptations of the financial need standard
and other standards describing specific financial limitations adopted through these
rules when the department determines:

(a) one or more standards limit the consumer's access to an identified rehabilitation need in the consumer's individual employment plan;

(b) there is not a commensurate service option available through the department or another program available to the consumer to address the rehabilitation need; and

(c) the consumer has insufficient financial resources by which to obtain the rehabilitation need.

AUTH: 53-7-102, 53-7-206, 53-7-302, 53-7-315, MCA

IMP: 53-7-102, 53-7-103, 53-7-105, 53-7-108, 53-7-205, 53-7-303, 53-7-306, 53-7-310, MCA

37.30.405 VOCATIONAL REHABILITATION PROGRAM: PAYMENT FOR SERVICES (1) through (3) remain the same.

(4) The department may pay for the costs for the provision of any services that are authorized to be provided to the consumer through the consumer's IPE to the extent that the consumer's income and financial resources, determined as provided in this rule and ARM 37.30.407, do not exceed the maximum amounts allowable for income and for financial resources calculated by the department as provided for in (4)(a) and (b).

(a) The maximum allowable level for income is a prospective 12 month annual income calculated at 250% of the ~~2006~~ 2007 U.S. Department of Health and Human Services poverty guidelines for households of different sizes.

(b) through (6)(a) remain the same.

AUTH: 53-7-102, 53-7-206, 53-7-315, MCA

IMP: 53-7-102, 53-7-105, 53-7-108, 53-7-205, 53-7-310, MCA

3. ARM 37.30.404

The Vocational Rehabilitation Program is a federally authorized program of services administered by the state to assist persons who are injured or disabled in achieving gainful employment. Coverage of the services available through the program in part is predicated upon the financial status of the consumer. There are various criteria and procedures that determine how much financial support is available to a

consumer and to what degree the consumer is to participate in financially contributing to payment for the services coordinated by through the Vocational Rehabilitation Program. Currently, in ARM 37.30.404 the department allows for exceptions to the imposition of those various financial standards.

The Rehabilitative Services Division of the United States Department of Education conducts Federal Technical Assistance and Monitoring of state administered Vocational Rehabilitation Programs. After the most recent review of the Montana program, the federal authorities instructed the Montana Vocational Rehabilitation to further refine the criteria in ARM 37.30.404 allowing for exceptions to the financial standards relating to a consumer's participation in vocational rehabilitation services. The standards are not applied so as to arbitrarily limit the nature and scope of services. The department is to assure that the exception criteria to the standards allow the standards to be adjusted as appropriate to individual cases so that the provision of services may be "based on the rehabilitation needs of the individual consistent with the IPE" (34 CFR 361.50). In response, the department is proposing changes to ARM 37.30.404 to broaden the scope of the permissible exceptions to be inclusive of nonfinancial standards governing access to the services available through the program. The proposed rule changes address the concerns of the federal authorities by allowing for more broader application of the discretionary exceptions available from the department under the rule and also by providing for more consistent application of the exceptions. The department, in order to reflect this broader scope, is proposing that the rule title be changed from "Adaptations of Financial Need Standard" to "Adaptations of Standards".

ARM 37.30.405

The department is proposing to amend ARM 37.30.405, Vocational Rehabilitation Program: Payment for Services. This rule sets forth the criteria that allow for the department to pay for services being made available to persons who are eligible for vocational rehabilitation services. The rule provides that the payment for services by the department may occur if the consumer's income and financial resources do not exceed maximum levels for income and resources established through the rule.

The proposed amendment revises the maximum level of allowable income. Currently the rule provides that the maximum level is 250% of the 2006 United States Department of Health and Human Services poverty guidelines for households. The proposed rule change would revise this level by replacing the year 2006 guidelines with the year 2007 guidelines.

The department some time ago in reviewing the possible means by which to set maximum income levels for purposes of eligibility for financial support in service purchase determined that these the poverty guidelines were the most appropriate means. The poverty guidelines have been established by the federal government for use in many respects inclusive of eligibility determinations for certain federally funded assistance programs. The guidelines are based upon an established methodology and are annually revised. There is broad national acceptance and use

of the guidelines. The department considered establishing its own methodology but found that it did not have the resources or expertise by which to develop and maintain its own methodology.

This proposed change, implementing the most recent set of relevant poverty level income amounts, is necessary so as to maintain the currency of the financial criteria. The older amounts fail to account for various economic changes over time such as inflation that are factors in dynamically defining and distinguishing a class of persons with limited income who are at or below the poverty level for purposes of federal programs and via this incorporated reference are the intended beneficiaries of the vocational rehabilitation services. Implementation of the most recent poverty guidelines assures the continuation of the appropriate coverage population.

4. Interested persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than 5:00 p.m. on May 10, 2007. Data, views, or arguments may also be submitted by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@mt.gov. The department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

5. The Office of Legal Affairs, Department of Public Health and Human Services has been designated to preside over and conduct the hearing.

/s/ Cary Lund
Rule Reviewer

/s/ Joan Miles
Director, Public Health and
Human Services

Certified to the Secretary of State April 2, 2007.